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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 JERRY BAXTER

12 Plaintiff,

13 vs.
14

15 SAN BERNARDINO COUNTY;
16 [REDACTED]
17
18
19
20
21

Defendants.

Case No. 5:25-cv-02620-DOC-MAR

**RESPONSE TO PLAINTIFF'S
OBJECTIONS TO THE REPORT AND
RECOMMENDATION OF THE
MAGISTRATE JUDGE**

Assigned to:
Honorable David O. Carter
United States District Judge

Referred to:
Honorable Margo A. Rocconi
United States Magistrate Judge

22 COME NOW Defendants San Bernardino County, [REDACTED]
23 and [REDACTED] and herewith submit their Response to Plaintiff's Objections to the
24 Report and Recommendation of the Magistrate Judge ("Response"). This Response is also
25 supported by Defendant's Evidentiary Objections to Exhibits A – E Submitted as Part of
26 Plaintiff's Request for Judicial Notice ("Evidentiary Objections"), filed concurrently
27 herewith as part of Defendants' Response.
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1 **I. RESPONSE TO PLAINTIFF’S OBJECTIONS¹**

2 **A. Plaintiff Failed to Comply with Evidentiary Requirements, his Evidence in**
3 **Inapposite, and it Must be Rejected**

4 Plaintiff cannot overcome the evidentiary objections that each exhibit he submitted as
5 part of his Request for Judicial Notice has not been authenticated (Fed. R. Evid. 901) and
6 each exhibit is hearsay (Fed. R. Evid. 802)². Plaintiff also did not introduce any of those
7 exhibits as part of his opposition to the Motion to Dismiss. However, even if those
8 hurdles can be cleared, none of the orders (Exhibits “A” – “C”) have any precedential
9 value: all three are from the trial-court level³, and none provide any meaningful legal
10 analysis, much less any analysis of Health and Safety Code § 7054, RLUIPA, the First
11 Amendment, the Fourteenth Amendment, or 42 U.S.C. § 1983. Even if Health and
12 Safety Code § 7054 were thoroughly analyzed by the Mendocino Court in any of the
13 orders submitted by Plaintiff (and there is no information that it was), thread-bare orders
14 at the trial-court level, dating from 12 – 24 years ago, from a state superior court
15 jurisdiction located approximately 200 plus miles away have no authoritative weight as
16 to issues in this matter, and thus should be ignored.

17 **B. The Magistrate’s Conclusion that there was no “Individualized Assessment”**
18 **is Correct.**

19 Plaintiff seeks to bend statutes to yield an outcome which neither follows federal
20 precedent nor is logical. Plaintiff has not addressed *Temple of 1001 Buddhas v. City of*
21 *Freemont*’s clear directive that, “Safety laws such as building or construction code
22 provisions do not qualify as ‘land use regulations’ under RLUIPA, at least where they do
23

24 ¹ The Court is given wide latitude to modify, accept, or reject the proposed
25 findings and recommendations of the Magistrate Judge (28 U.S.C. § 626(b)(1), and the
26 Court is sufficiently well-versed in its powers that further legal references are
unnecessary.

27 ² See Defendant’s Evidentiary Objections filed concurrently herewith.

28 ³ Interestingly enough, all three emanate from the same county (one of 58
counties in California),

1 not explicitly reference zoning laws.” 588 F.Supp.3d 1010, 1027 (N.D. Cal. 2022). As
2 the California Supreme Court itself has declared, laws regarding the “disposition of
3 human remains” are designed, among other reasons, to “protect public health.”
4 *Christensen v. Superior Court (Pasadena Crematorium of Altadena)*, 54 Cal.3d 868, 893
5 (1991). Plaintiff cannot meaningfully contend that a state lacks the authority to regulate
6 the “disposition of human remains” to “protect public health” or that a County of that
7 state must follow state law. Plaintiff’s notion that because a state can determine where
8 human remains can be buried, it automatically creates a violation of RLUIPA is
9 unsupported by any legal authority. Plaintiff’s contention that a public entity can issue a
10 permit which would authorize an individual to violate a state’s Health and Safety Code is
11 illogical and would usurp the rule of law. Given the mandates of Health and Safety
12 Code § 7054, the County could not conduct an individual assessment, it could not issue a
13 permit for Plaintiff to bury an individual on his property.

14 **C. The Magistrate’s Conclusion that the Law is Facially Neutral and Generally**
15 **Applicable is Correct, and Only a Rational Basis is Required.**

16 In *Tandon*, the U.S. Supreme Court noted, “government regulations are not neutral
17 and generally applicable, and therefore trigger strict scrutiny under the Free Exercise
18 Clause, whenever they treat *any* comparable secular activity more favorably than
19 religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In this matter, the
20 reason an individual may wish to bury his relative on his property, whether it is based on
21 a religious belief or because it was the decedent’s wish, is irrelevant; neither is permitted
22 under Health and Safety Code § 7054, and there is no preference for secular reasons for
23 burial on private property over religious reasons for burial on private property.

24 Plaintiff erroneously argues that the Magistrate’s Report focuses on the neutrality of
25 Health and Safety Code § 7054 without considering whether it is generally applicable.
26 Plaintiff’s example is that § 7054 does not apply to “reburial of Native American
27 remains.” Plaintiff has not provided legal authority supporting his position that such a
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1 provision is unconstitutional nor has Plaintiff probed the vast area of law that
2 encompasses disturbing Native American burial sites and/or reburial of Native American
3 remains. Plaintiff also overlooks the term “reburial.” In this matter, Plaintiff is not
4 seeking a “reburial” of an individual. Plaintiff’s comparison of a burial of an animal to
5 that of a human is fallacious. It also overlooks the high priority placed on the
6 “disposition of human remains” by the State of California. *Christensen*, 54 Cal.3d at
7 893. Plaintiff’s analysis neglects the fact that in *Church of Lukumi Babalu Aye v. City of*
8 *Hialeah*, the ordinance at issue demonstrated that “suppression of the central element of
9 the Santeria worship service [animal sacrifice] was the object of the ordinances.” 508
10 U.S. 520, 534 (1993). There is nothing in this matter which shows that Health and
11 Safety Code § 7054 was intended to impact a central element of any worship service.
12 Unlike *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522 (2021), Plaintiff is
13 not required to adopt anyone’s beliefs, he is required to follow the safety code.
14 Plaintiff’s references to documents which have not met evidentiary requirements and
15 which are neither binding on this court nor precedential for even California state court
16 are ineffective. The law is neutral and generally applied, and the First Amended in not
17 implicated.

18 **D. Plaintiff has Failed to Meet Ninth Circuit Pleading Requirements to Plead an**
19 **Equal Protection Violation.**

20 Contrary to Plaintiff’s assertions, the Court has not imposed a heightened standard of
21 pleading on Plaintiff with respect to his Equal Protection Claim. The Magistrate Judge
22 has followed the requirements outlined by the Ninth Circuit itself:

23 “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection
24 Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted
25 with an intent or purpose to discriminate against the plaintiff based upon membership
26 in a protected class.”
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1 *Furnace v. Sullivan*, 705 F.3d 1021, 2013 (9th Cir. 2013) citing *Barren v.*
2 *Harrington*, 152 F.3d 1193, 1194 (9th Cir.1998). Plaintiff, based on no factual
3 information whatsoever, would have the court infer discrimination. Plaintiff's reference
4 to *Village of Arlington* offers no support to his position where Plaintiff has not alleged,
5 must less produced facts regarding either "the historical background of the decision," or
6 whether there were "[d]epartures from the normal procedural sequence." *Village of*
7 *Arlington Heights v. Metropolitan Housing Development* , 429 U.S. 252, 265, 267
8 (1977). Plaintiff cannot meaningfully contend that the County issued a permit to anyone
9 to bury an individual on their private property, while Plaintiff was denied such a permit.
10 There is nothing whatsoever that indicates that the County's compliance with a health
11 and safety law regarding the burial of human remains (that it did not create) was based
12 on Plaintiff's belief that he should bury his father on this property. The response by the
13 department would have been the same, regardless of the rationale given by Plaintiff or
14 anyone else.

15 **E. Plaintiff is Subject to Generally Applicable Laws and Possesses no Greater**
16 **Rights in the Remains of a Relative than Anyone Else Would.**

17 Plaintiff has provided no legal authority, which calls into question *Chaudry v. City*
18 *of Los Angeles* articulation of California's law regarding burial. 573 F.3d App'x 628,
19 632 (9th Cir. 2014)⁴, and his Procedural Due Process claim fails. Plaintiff has also
20 provide no authority for his novel interpretation of California law on that issue⁵.
21 Plaintiff has also provide no legal authority to undermine the pronouncement in *Shelley*
22 that:
23

24 ⁴ Fed. R. App. Proc. 32.1 applies to "federal judicial opinions, order judgments or
25 other written dispositions" designated as not published "issued on or after January 1,
26 2007."

27 ⁵ Plaintiff has also shifted his position from Plaintiff was unfairly denied a permit
28 and the County purportedly "prevented Plaintiff from fulfilling his sincere religious
obligation" (Complaint Dkt. 1 ¶ 63) to Plaintiff cannot "take custody of his father's
remains" (Plaintiff's Objections page 12, last full paragraph).

1 In accordance with the majority of courts that have considered the question and
2 California law, this Court holds Plaintiffs do not have a property interest in the
3 remains of their relative cognizable as a procedural due process claim under the
4 Fourteenth Amendment.

5 *Shelley v. Cnty. of San Joaquin*, 996, F.Supp.2d at 921, 931 (E.D. Cal. 2014). Plaintiff's
6 allegations fall short of demonstrating he possesses a property right in the remains of a
7 family member, and his Procedural Due Process rights are not implicated.

8 **F. RLUIPA does not Apply. Therefore, Substantially Burdened is not the**
9 **Proper Metric.**

10 As explained above, there was no "individual assessment" in this matter, therefore,
11 RLUIPA requirements were not met. Nevertheless, Plaintiff contends that his religious
12 exercise was violated and therefore, his contentions regarding RLUIPA are still viable.
13 Plaintiff misunderstands the Magistrate Judge's analysis. Plaintiff has not sufficiently
14 pleaded a RUILPA violation, therefore, there is no need to examine whether or not there
15 was a substantial burden imposed on Plaintiff.

16 Even if Plaintiff's assertion that the Magistrate Judge's finding that Plaintiff failed to
17 meet the "individualized assessment" requirement is in error, which it is not, Plaintiff
18 does not adequately address what is needed to demonstrate a substantial burden. The
19 "substantial burden" provision of RLUIPA, § 2000cc(a)(1), provides:

20 No government shall impose or implement a land use regulation in a manner that
21 imposes a substantial burden on the religious exercise of a person, including a
22 religious assembly or institution, unless the government demonstrates that imposition
23 of the person, assembly, or institution –

24 (A) is in furtherance of a compelling interest; and

25 (B) is the least restrictive means of furthering that compelling government interest.

26 Int'l Church of Foursquare Gospel v. City of San Leandro, 673 F.3d 1059, 1067 (9th Cir.
27 2011). "[W]e have held that a substantial burden, 'must place more than inconvenience
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1 on religious exercise.” *Id. citing Guru Nanak Sikh Society of Yuba City v. County of*
2 *Sutter*, 456 F.3d 978, 988 (9th Cir. 2006). 42 U.S.C. § 2000cc(a)(2)(c) limits the
3 application of that subsection to matters involving “a land use regulation or system of
4 land use regulations . . . that permit the government to make, individualizes assessment
5 of the proposed uses for the property involved.”

6 Even if Plaintiff were to successfully contend that the events and circumstances
7 alleged in his Complaint qualify for RLUIPA protection (which they do not), Plaintiff
8 has pleaded no facts demonstrating that not burying a human body of a relative on his
9 land imposes a “substantial burden” on his religious exercise. As the U.S. Supreme
10 Court has declared, “Not all burdens on religions are unconstitutional.” *U.S. v. Lee*, 455
11 U.S. 252, 257 (1982) [a non-RLUIPA case].

12 “For land use regulation to impose a ‘substantial burden,’ it must be ‘oppressive’ to a
13 ‘significantly great’ extent. That is, a ‘substantial burden’ on religious exercise’ must
14 impose a significantly great restriction or onus upon such exercise.”
15 *Guru*, 456 F.3d at 988-89, *citing, San Jose Christian*, 360 F.3d 1024, 1034 (9th Cir.
16 2004).

17 There is no need to conduct a substantial burden analysis because Plaintiff has not
18 met threshold requirements⁶.

19 **G. Plaintiff Erroneously Contends a Separate Analysis of 42 U.S.C. § 1983 was**
20 **Necessary.**

21 Plaintiff’s second through fourth claims in his Complaint were all premised on
22 purported violations of his constitutional rights under 42 U.S. § 1983. Each of those
23 were properly addressed by the Magistrate Judge in her Report and Recommendation.
24 There was no need to separately address 42 U.S.C. § 1983. Moreover, if there were no
25

26
27 ⁶ The Magistrate Judge’s finding that because there is no basis for Plaintiff’s
28 federal claims, the Court should decline supplemental jurisdiction over Plaintiff’s state
law claims (28 U.S.C. § 1367(c)(3)) is sound and should be adopted by the Court.

1 constitutional violations (as correctly determined by the Magistrate Judge), then an in-
2 depth 1983 analysis would have been moot.

3 Even if Plaintiff had sufficient pleaded fact(s) demonstrating a constitutional
4 violation, which he did not, Plaintiff's reliance on *Pembaur* to support his argument that
5 there was insufficient "municipality analysis," overlooks that court's recognition that
6 there are limitations as to what conduct may impose liability on a governmental entity,
7 "[t]he fact that a particular official—even a policymaking official—has discretion in the
8 exercise of particular functions does not, without more, give rise to municipal liability
9 based on an exercise of that discretion." *Pembaur v. City of Cincinnati*, 475 U.S. 469,
10 481 (1986). In this matter, no meaningful facts have been alleged demonstrating that
11 anyone exercised discretion when the request for a burial permit was denied by the
12 County. The County was required to follow the law and did so.

13 **CONCLUSION**

14 The Magistrate Judge's Report and Recommendation is based on a proper,
15 thorough, and sound legal analysis. The Court should adopt the findings in that report
16 and follow the Magistrate Judge's recommendations by granting Defendants' motion and
17 dismissing Plaintiff's Complaint with prejudice without leave to amend.

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19 DATED: June 18, 2026

Respectfully submitted,

20 LAURA L. FEINGOLD
21 County Counsel

22
23 /s/ Michael E. Jewell

24 MICHAEL E. JEWELL
25 Deputy County Counsel
26 Attorneys for Defendants
27 SAN BERNARDINO COUNTY,
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